

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

Application 2705 Permit 1140 License 467

ORDER (1) APPROVING CHANGE IN THE PLACE OF USE, (2) DELETING A PURPOSE OF USE, (3) REDUCING THE AMOUNT, (4) ADDING ENDANGERED OR THREATENED SPECIES TERM, (5) REVOKING THE ORIGINAL LICENSE, AND (6) DIRECTING ISSUANCE OF SEPARATE LICENSES

WHEREAS:

1. License 467 was issued to C.L. Filigno and was filed with the County Recorder of Humboldt County on February 26, 1926. License 467 was subsequently assigned to Kenneth Smith and Tammy Smith, Paul Bareilles, and Thomas C. Peterson.
2. A request for division of the license and a petition for a change in the place of use have been filed with the State Water Resources Control Board (SWRCB) on May 28, 1989 and said Board has determined that good cause for such division of the license has been shown.
3. The SWRCB has determined that the petitioned change and the division of the license does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.
4. The license term for the continuing authority of the SWRCB should be updated to conform to Section 780(a), Title 23 of the California Code of Regulations.
5. Fish or wildlife species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act.

NOW, THEREFORE, IT IS ORDERED THAT:

1. License 467 is hereby revoked upon issuance of Licenses 467A, 467B, and 467C.
2. Separate licenses will be issued as follows:

License 467A

Owner: Kenneth and Tammy Smith

Source: An Unnamed Spring tributary to Unnamed Stream (aka Spring Creek) thence Trinity River, in Humboldt County.

Purpose of Use: Domestic

Amount: 4,500 gallons per day (gpd)

Season: May 1 to September 1 (4,500 gpd)
September 2 to April 30 (400 gpd)

Maximum
Annual
Amount: 2.4 acre-feet (af)

Point of
Diversion: South 2,260 feet and West 65 feet from N $\frac{1}{4}$ corner of
Section 9, T6N, R5E, HB&M, being within SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of said
Section 9 (California Coordinate System, Zone 1, N 578,000
and E 1,552,150).

Place
of Use: Within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 9, T6N, R5E, HB&M (Assessor
Parcel No. 524-201-040).

License 467B

Owner: Paul Bareilles

Source: Unnamed Stream (aka Newell Gulch) tributary to Trinity River
in Humboldt County

Purpose
of Use: Domestic

Amount: 2,250 gpd

Season: May 1 to September 1 (2,250 gpd)
September 2 to April 30 (200 gpd)

Maximum
Annual
Amount: 1.2 af

Point of
Diversion: South 825 feet and East 188 feet from N $\frac{1}{4}$ corner of Section
9, T6N, R5E, HB&M, being within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said
Section 9 (California Coordinate System, Zone 1, N 579,450
and E 1,552,150).

Place
of Use: Within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 9, T6N, R5E, HB&M (Assessor
Parcel No. 524-051-120).

License 467C

Owner: Thomas C. Peterson

Source: Unnamed Stream (aka Newell Gulch) tributary to Trinity River
in Humboldt County

Purpose
of Use: Domestic

Amount: 4,500 gpd

Season: May 1 to September 1 (4,500 gpd)
September 2 to April 30 (400 gpd)

Maximum
Annual
Amount: 2.4 acre-feet (af)

Point of

Diversion: South 825 feet and East 188 feet from NW¼ corner of Section 9, T6N, R5E, HB&M, being within NW¼ of NE¼ of said Section 9 (California Coordinate System, Zone 1, N 579,450 and E 1,552,150).

Place

of Use: Within the NW¼ of NE¼ of Section 9, T6N, R5E, HB&M (Assessor Parcel No. 524-051-100).

3. That Licenses 467A, 467B, and 467C contain all other terms and conditions presently in License 467 or updated versions of License 467 for compliance with State Water Resources Control Board's policy.
4. A continuing authority condition shall be updated and read as follows:

Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this license including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

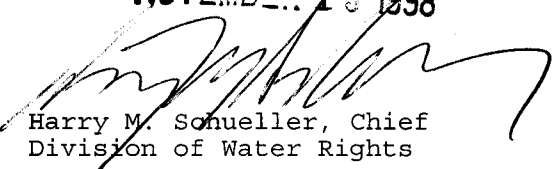
5. The addition of endangered or threaten species term to read as:

This permit does not authorize any act which results in the taking of a

threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(Endangered or Threatened Species Term)

Dated: **NOVEMBER 18 1998**



Harry M. Schueller, Chief
Division of Water Rights



STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES

ORDER

APPLICATION 2705

PERMIT 1140

LICENSE 467

ORDER ALLOWING CORRECTION OF DESCRIPTION OF
POINTS OF DIVERSION

Licensee having established to the satisfaction of the Division of Water Resources that the correction of description of points of diversion under Application 2705, Permit 1140, License 467 for which petition was submitted on February 13, 1935, will not operate to the injury of any other legal user of water, the Division of Water Resources so finds, and

IT IS ORDERED that permission be and the same is hereby granted to change the description of points of diversion under said Application 2765, Permit 1140, License 467, to read as follows to-wit:

NEWELL GULCH; - SOUTH EIGHT HUNDRED TWENTY-FIVE (825) FEET AND EAST ONE HUNDRED EIGHTY EIGHT (188) FEET FROM THE NORTH 1/4 CORNER OF SECTION 9, T. 6 N. R. 5 E. H.B. & M., BEING WITHIN THE NW 1/4 OF NE 1/4 OF SAID SECTION 9.

SPRING;- SOUTH TWENTY TWO HUNDRED SIXTY (2260) FEET AND WEST SIXTY FIVE (65) FEET FROM THE NORTH 1/4 CORNER OF SECTION 9, T. 6 N. R 5 E., H.B. & M. BEING WITHIN THE SE 1/4 OF NW 1/4 OF SAID SECTION 9.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 28th day of March, 1935.

EDWARD HYATT, State Engineer.

By Harold Conkeling
Deputy





STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RIGHTS

License for Diversion and Use of Water

LICENSE No. 447

PERMIT No. 1140

APPLICATION No. 2708

This is to Certify, That **G. L. Filigno of Willow Creek, California,** ^{Notice of Assignment (Over)}

has made proof to the satisfaction of the Division of Water Rights of California of a right to the use of the waters of **(a) Newell Gulch and (b) a spring in Humboldt County**

tributary of **Trinity River**

for the purpose of **irrigation and domestic uses** under Permit No. **1140** of the Division of Water Rights and that said right to the use of said waters has been perfected in accordance with the laws of California, the rules and regulations of the Division of Water Rights and the terms of the said permit; that the priority of the right herein confirmed dates from **December 27, 1921;**

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed **six hundredths (0.06) cubic feet per second total from either or both sources from about May 1st to about September 1st of each season, and throughout the remainder of the year as required for domestic purposes.** Diversions under the license, which are to be directly applied to irrigation use without storage shall not exceed the rate of one cubic foot per second continuous flow to each eighty acres of irrigated land; provided however, that in case of rotation the equivalent of such continuous flow allowance for any thirty day period may be diverted in a shorter time if there be no interference with other vested rights.

The point of diversion of such water is located

(a) South fourteen degrees East (S 14° E), fifteen and one-half (15½) chains from the one-quarter corner common to Sections 4 and 9, T 6 N, R 5 E, N.M., being within the NE¼ of NE¼ of said Section 9;

(b) South thirteen degrees West (S 13° W), twenty-five (25) chains from the said one-quarter corner common to Sections 4 and 9, T 6 N, R 5 E, N.M., being within the SE¼ of NE¼ of said Section 9.

A description of the lands or the place where such water is put to beneficial use is as follows:

domestic use, and the irrigation of 2.75 acres within the NE¼ of NE¼ of Section 9, T 6 N, R 5 E, N.M.

The right to the diversion and use of the water aforesaid hereby confirmed is restricted to the point of diversion herein specified and to the lands or place of use herein described.

Amended by order of 3-28-25

This license is granted and said appropriator takes all rights herein mentioned subject to the terms and conditions set forth in Section 20 of Chapter 586, Statutes 1913, which is as follows:

Sec. 20. All permits and licenses for the appropriation of water shall be under the terms and conditions of this act, and shall be effective for such time as the water actually appropriated under such permits and licenses shall actually be used for the useful and beneficial purpose for which said water was appropriated, but no longer; and every such permit or license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this section and likewise the statement that any appropriator of water, to whom said permit or license may be issued, shall take the same subject to such conditions as therein expressed; *provided*, that if, at any time after the expiration of twenty years after the granting of a license, the state, or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the state shall have the right to purchase the works and property occupied and used under said license and the works built or constructed for the enjoyment of the rights granted under said license; and in the event that the said state, city, city and county, municipal water district, irrigation district, lighting district or political subdivision of the state so desiring to purchase and the said owner of said works and property can not agree upon said purchase price, said price shall be determined in such manner as is now or may hereafter be determined in eminent domain proceedings. If it shall appear to the state water commission at any time after a permit or license is issued as in this act provided that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has not put the water granted under said permit or license to the useful or beneficial purpose for which the permit or license was granted, or that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has ceased to put said water to such useful or beneficial purpose, or that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee has failed to observe any of the terms and conditions in the permit or license as issued, then and in that case the said commission, after due notice to the permittee, licensee, or the heirs, successors or assigns of such permittee or licensee, and a hearing thereon, may revoke said permit or license, and declare the water to be unappropriated and open to further appropriation in accordance with the terms of this act. And the findings and declaration of said commission shall be deemed to be prima facie correct until modified or set aside by a court of competent jurisdiction; *provided*, that any action brought so to modify or set aside such finding or declaration must be commenced within thirty days after the service of notice of said revocation on said permittee or licensee, his heirs, successors or assigns. And every licensee or permittee under the provisions of this act if he accept such permit or license shall accept the same under the conditions precedent that no value whatsoever in excess of the actual amount paid to the state therefor shall at any time be assigned to or claimed for any permit or license granted or issued under the provisions of this act, or for any rights granted or acquired under the provisions of this act, in respect to the regulations by any competent public authority of the services or the price of the services to be rendered by any permittee or licensee, his heirs, successors or assigns or by the holder of any rights granted or acquired under the provisions of this act, or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the state or any city, city and county, municipal water district, irrigation district, lighting district or any political subdivision of the state, of the rights and property of any permittee or licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this act. The application for a permit by municipalities for the use of water for said municipalities or the inhabitants thereof for domestic purposes shall be considered first in right, irrespective of whether they are first in time; *provided, however*, that such application for a permit or the granting thereafter of permission to any municipality to appropriate waters, shall not authorize the appropriation of any water for other than municipal purposes; and *providing*, further, that where permission to appropriate is granted by the state water commission to any municipality for any quantity of water in excess of the existing municipal needs therefor, that pending the application of the entire appropriation permitted, the state water commission shall have the power to issue permits for the temporary appropriation of the excess of such permitted appropriation over and above the quantity being applied from time to time by such municipality; and *providing*, further, that in lieu of the granting of such temporary permits for appropriation, the state water commission may authorize such municipality to become as to such surplus a public utility, subject to the jurisdiction and control of the railroad commission of the State of California for such period or periods from and after the date of the issuance of such permission to appropriate, as may be allowed for the application to municipal uses of the entire appropriation permitted; and *providing*, further, that when such municipality shall desire to use the additional water granted in its said application it may do so upon making just compensation for the facilities for taking, conveying and storing such additional water rendered valueless for said purposes, to the person, firm or corporation which constructed said facilities for the temporary use of said excess waters, and which compensation, if not agreed upon between the municipality and said person, firm or corporation, may be determined in the manner provided by law for determining the value of property taken by and through eminent domain proceedings.

Witness the signature of the Chief of the Division of
WATER RIGHTS, Department of Public Works of the
State of California, and the seal of said department
this ~~eight~~ day of February 1926

Lawrence O. Clayton
Chief of Division of Water Rights, Department
of Public Works of the State of California



10/23/57

RECEIVED NOTICE OF ASSIGNMENT TO

Estate of C. L. ...

3/23/59

RECEIVED NOTICE OF ASSIGNMENT TO

Bruce O. McIntosh +

Thomas C. McKnight

5-16-66

RECEIVED NOTICE OF ASSIGNMENT TO

Lawrence O. Clayton + K. Clayton

8-8-86 Assign to Lawrence E. + Grace E. Hilchist

LICENSE NO.

STATE OF CALIFORNIA

DEPARTMENT OF PUBLIC WORKS

DIVISION OF WATER RIGHTS

LICENSE

TO APPROPRIATE WATER

ISSUED TO

DATED

40022 6-25 24

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